

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1316

Introduced by

Representatives Louser, Beadle, Becker, Streyle, Wieland

Senators Krebsbach, J. Lee, Poolman

1 A BILL for an Act to create and enact two new sections to chapter 47-34 of the North Dakota
2 Century Code, relating to good funds and disclosures for real estate transactions; and to amend
3 and reenact sections 47-34-01 and 47-34-02 of the North Dakota Century Code, relating to
4 good funds for real estate transactions.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 47-34-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **47-34-01. Definitions.**

9 As used in this chapter:

- 10 1. "Closing agent" means a person that closes a real estate transaction in connection
11 with the purchase, sale, or financing of an interest in real estate. The term does not
12 include a lender or an employee of a lender that conducts a settlement or closing of a
13 real estate secured loan provided by the lender in the office of the lender.
- 14 2. "Collected funds" means a cash deposit or a check that has been presented for
15 payment and for which payment has been irrevocably credited to the closing agent's
16 escrow account.
- 17 3. "Escrow account" means:
- 18 a. A checking account established by a closing agent with a bank, savings and loan
19 association, credit union, or savings bank that is chartered under the laws of a
20 state or the United States and which is used exclusively for the deposit and
21 disbursement of funds for a real estate transaction; or
- 22 b. A trust account maintained by an attorney under the North Dakota Rules of
23 Professional Conduct.
- 24 ~~3.4.~~ "Good funds" means funds in any one or more of the following forms:

- 1 a. United States currency.
- 2 b. Wired funds unconditionally held by and irrevocably credited to the escrow
3 account of the closing agent.
- 4 c. A check that has been presented for payment and for which payment has been
5 ~~received~~collected. As used in this subdivision, the term check includes a certified
6 check and a cashier's check.
- 7 d. A check ~~not to exceed three thousand dollars which~~that is drawn on the trust
8 account of a real estate broker licensed under chapter 43-23 or on the trust
9 account maintained by an attorney under the North Dakota Rules of Professional
10 Conduct, ~~if the closing agent has reasonable and prudent grounds to believe that~~
11 ~~sufficient funds will be available for withdrawal from the trust account on which~~
12 ~~the check is drawn at the time of disbursement of funds from the closing agent's~~
13 ~~escrow~~ for which funds are collected funds by the real estate broker or the
14 attorney's trust account.
- 15 e. A cashier's check not to exceed ~~ten~~fifty thousand dollars in the aggregate
16 ~~that~~which is received by the closing agent and which is drawn on an existing
17 account at a bank, savings and loan association, credit union, or savings bank
18 chartered under the laws of a state or the United States located in this state.
- 19 f. A check drawn on the escrow account of another closing agent, ~~if the closing~~
20 ~~agent in the real estate transaction has reasonable and prudent grounds to~~
21 ~~believe that sufficient funds will be available for withdrawal from the account upon~~
22 ~~which the check is drawn at the time of disbursement of funds from the escrow~~
23 ~~account of the closing agent in the real estate transaction~~.
- 24 g. Funds transferred to the closing agent's escrow account by the bank, savings
25 and loan association, credit union, or savings bank that is the host institution of
26 the closing agent's escrow account.
- 27 4.5. "Real estate transaction" means a transaction in which a person deposits with a
28 closing agent funds that are to be held until a specified event occurs or the
29 performance of a prescribed condition in connection with the purchase, sale, or
30 financing of an interest in real estate; or a settlement or closing conducted in
31 connection with the purchase, sale, or financing of an interest in real estate. The term

1 does not include a loan financing if the only parties to the loan transaction are the
2 lender and the borrower, and the lender is responsible for disbursing all of the funds to
3 the borrower or to a third party in order to pay fees and charges associated with the
4 loan transaction.

5 **SECTION 2. AMENDMENT.** Section 47-34-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **47-34-02. Real estate transaction disbursements.**

8 A closing agent may not make disbursements from an escrow account in connection with a
9 real estate transaction unless funds that are received ~~from any single party to the real estate~~
10 ~~transaction which in the aggregate are at least ten thousand dollars~~ are good funds.

11 **SECTION 3.** A new section to chapter 47-34 of the North Dakota Century Code is created
12 and enacted as follows:

13 **Disclosures.**

14 In a prominent manner in the closing documents, a closing agent shall disclose the
15 anticipated closing date and all of the dates through which any loan payoffs are calculated.

16 **SECTION 4.** A new section to chapter 47-34 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Civil damages.**

19 In addition to any other cause of action that may exist, a person may bring a cause of action
20 against a person that violates section 47-34-02. In addition to any actual damages a plaintiff
21 may prove, a person that violates section 47-34-02 is liable to the plaintiff for five hundred
22 dollars per violation in the first action. In any subsequent action for violation of section 47-34-02,
23 a person is liable for one thousand dollars per violation.